

DAVID L. ANDERSON (CABN 149604)  
United States Attorney  
SARA WINSLOW (DCBN 457643)  
Chief, Civil Division  
KIMBERLY A. ROBINSON (DCBN 999022)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
Telephone: (415) 436-7298  
Facsimile: (415) 436-6748  
Email: kimberly.robinson3@usdoj.gov

Attorneys for the United States of America

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NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**CV 19 80099 MISC KAW**

*Matter of Dr. Eric Chambon* ) MISC. NO.  
Ref. No. 18/1169 DJ Reference Number: 189-40 )  
19-2 )  
LETTER OF REQUEST FROM THE ) **MEMORANDUM OF POINTS AND**  
TRIBUNAL DE GRANDE INSTANCE DE ) **AUTHORITIES IN SUPPORT OF UNOPPOSED**  
LILLE, FRANCE FOR INFORMATION FROM ) **APPLICATION FOR ORDER PURSUANT TO**  
GOOGLE, INC. ) **28 U.S.C. § 1782**

**INTRODUCTION**

In the above-captioned civil action pending in the Tribunal de Grande Instance de Lille, France, the French Court has requested assistance under the Hague Convention in the taking of evidence from Google Inc. ("Google"). Lacking jurisdiction to obtain information directly from Google on United States soil, the French court has requested international judicial assistance to provide it with information from Google relevant to that civil matter. The present application requests that this Court appoint Assistant United States Attorney Kimberly A. Robinson as Commissioner to take testimony from Google, so that AUSA Robinson can subpoena certain information from Google to transmit to the French Court. Google and the United States Attorney's Office have met and conferred about the substance of the requests and about the procedure to provide the French court with the information it

MEMORANDUM OF POINTS AND AUTHORITIES

1 seeks. Google does not object to the appointment.

2 **I. FACTUAL BACKGROUND**

3 **A. Information Sought By The French Court.**

4 This application pertains to a Request for Assistance sought by the French Court for names, login  
5 I.P. addresses, and email addresses for individuals identified in the request that published reviews on  
6 Google about Dr. Eric Chambon, a French plastic surgeon who practices in Lille, France. Dr. Chambon  
7 seeks to bring a defamation suit against the individuals who published the allegedly defamatory reviews  
8 about his surgical practices. Without information identifying the individuals, Dr. Chambon cannot  
9 establish the elements of a prima facie case for defamation under the relevant international law.

10 **B. Meet And Confer With Google.**

11 The undersigned Assistant U.S. Attorney has met and conferred telephonically and via electronic  
12 mail with legal counsel for Google regarding the French Court's request. Robinson Decl. at ¶ 4. During  
13 the meet and confer, Google requested additional information to identify the users who reviewed Dr.  
14 Chambon. On March 20, 2019, the undersigned Assistant U.S. Attorney was able to provide that  
15 information. *Id.* at ¶ 7. Google is willing to provide the requested information for the specified users in  
16 response to appropriate legal process after it provides 21-days notice to the users of the legal process and  
17 the users do not object to production during the notice period. Google's position is that it can provide  
18 the information directly to the U.S. Attorney's Office pursuant to a United States federal court subpoena  
19 for the information. *Id.* at ¶ 4. The United States Department of Justice Civil Division, Office of  
20 International Judicial Assistance, to whom the requests were addressed, has confirmed that this  
21 procedure will be acceptable. *Id.* at ¶ 5.

22 **II. ARGUMENT**

23 The United States District Courts are empowered by 28 U.S.C. Section 1782 to subpoena  
24 witnesses and compel the production of documents on behalf of foreign and international tribunals. In  
25 this case, an Argentine court requests the U.S. Department of Justice to obtain information and  
26 documents from Google in Mountain View, California, which is located within the jurisdiction of this  
27 Court. As set forth in the accompanying Declaration and Proposed Order, the United States and Google  
28

1 have negotiated a mutually acceptable procedure to handle the request in this particular case.

2 **A. This Court Should Appoint A Commissioner To Subpoena Information From**  
 3 **Google On Behalf Of The French Court.**

4 The authority of this Court to order the production of evidence for use in a proceeding in a  
 5 foreign country is set forth in 28 U.S.C. § 1782, which provides:

6 The district court of the district in which a person resides or is found may order  
 7 him to give his testimony or statement or to produce a document or other thing for  
 8 use in a proceeding in a foreign or international tribunal. The order may be made  
 9 pursuant to a letter rogatory issued, or request made, by a foreign or international  
 10 tribunal or upon the application of any interested person and may direct that the  
 testimony or statement be given, or the document or other thing be produced,  
 before a person appointed by the court. By virtue of his appointment, the person  
 appointed has the power to administer any necessary oath and take the testimony  
 or statement.

11 28 U.S.C. § 1782(a). The legislative history shows that Congress intended for the United States to set an  
 12 example for other countries in rendering international judicial assistance. The Senate report states:

13 Enactment of the bill into law will constitute a major step in bringing the United  
 14 States to the forefront of nations adjusting their procedures to those of sister  
 nations and thereby providing equitable and efficacious procedures for the benefit  
 of tribunals and litigants involved in litigation with international aspects.

15 It is hoped that the initiative taken by the United States in improving its  
 16 procedures will invite foreign countries similarly to adjust their procedures.

17 S. Rep. No. 1580, 88th Cong., 2d Sess., reprinted in 1964 U.S. Code Cong. & Admin. News 3782, 3783.

18 The proper criteria for determining whether the court should exercise its discretion in favor of  
 19 assisting a foreign tribunal are outlined in *In Re Request for Judicial Assistance from the Seoul District*  
 20 *Criminal Court*, 555 F.2d 720 (9th Cir. 1977):

21 Under the statute the only restrictions explicitly stated are that the request be  
 22 made by a foreign or international tribunal, and that the testimony or material  
 requested be for use in a proceeding in such a tribunal. This court also has held  
 23 that the investigation in connection with which the request is made must relate to  
 a judicial or quasi-judicial controversy.

24 555 F.2d at 723 (citation omitted).

25 The letters of request in this case establish that (1) the requests were made by a foreign tribunal,  
 26 the Tribunal de Grande Instance de Lille, France; (2) the information sought is for use in proceedings in  
 27 that tribunal; and (3) the requests relate to a judicial controversy in France. Accordingly, the request

comes well within those circumstances contemplated by Congress in expanding the federal courts' authority to act in such matters. *In Re Letter of Request from the Crown Prosecution Service of the United Kingdom*, 870 F.2d 686, 689-91 (D.C. Cir. 1989); *In Re Letters Rogatory from the Toyko District, Toyko, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976). Therefore, the United States asks this Court to honor the requests for assistance.

**B. Google And The United States Have Agreed That Google May Send Responsive Information To The U.S. Attorney's Office.**

The United States and Google have agreed that Google may release the requested information in this particular case directly to the U.S. Attorney's Office in San Francisco in accordance with the terms and conditions set forth in the accompanying proposed order. Google has stated that it does not oppose the entry of the accompanying proposed order. Robinson Decl. at ¶ 7.

The reception of letters rogatory and the appointment of a Commissioner to execute them are matters customarily handled ex parte, and persons with objections to the request raise those objections by moving to quash any subpoenas issued by the Commissioner. *Tokyo Dist.*, 539 F.2d at 1220. However, the United States has met and conferred with Google and served Google with this application and supporting papers, and Google does not object to the relief requested therein. Robinson Decl. ¶¶ 4, 7. As described in the proposed order, Google will provide notice of the subpoena to the relevant users and afford them the opportunity to file an objection or motion to quash in this action.

**CONCLUSION**

For the foregoing reasons, the United States respectfully requests this Court to issue the accompanying proposed order.

DATED: April 15, 2019

Respectfully submitted,

DAVID L. ANDERSON

/s/ Kimberly A. Robinson

KIMBERLY A. ROBINSON  
Assistant United States Attorney